

6th August,
2021
(AK)
8

C.O. 354 of 2021

**Sri Susanta Kumar Jana and others
Vs.
Sasanka Sekhar Jana and others**

(Via video conference)

Mr. Amit Baran Dash
... For the Petitioners.

Mr. Sadananda Ganguli
Mr. Kallol Kumar Maity
...For the Opposite party nos.1 & 2.

Learned counsel appearing for the petitioners contends that the probate court acted without jurisdiction in rejecting the petitioners' application for being added as parties to the probate proceeding, in view of the petitioners claiming direct interest in a portion of the bequeathed property by virtue of a purported gift deed executed by the testator during his lifetime in favour of the petitioners.

Learned counsel submits that the probate court erroneously misinterpreted the judgments cited before it and came to the conclusion that the interest of the petitioners is adverse to the testator.

On the other hand, it is contended that the petitioners only claim through the testator by way of a

deed of gift and, as such, have direct interest in the property-in-dispute.

Learned counsel cites a Division Bench judgment of this court reported at 86 C.W.N 783 [*Golok Chandra Bera vs. Golapi Bewa and others*] as well as the judgments of the Supreme Court, including *Krishna Kumar Birla vs. Rajendra Singh Lodha and others*, reported at (2008) 4 SCC 300 and *G. Gopal vs. C. Baskar and others*, reported at (2008) 10 SCC 489, in support of the proposition that even a person having a slight interest in the estate of a testator has a caveatable interest and can be impleaded as a party to the probate proceeding.

Learned counsel next relies on a Division Bench judgment of this court, reported at 2008 (1) CHN 563 [*Jagdish Prasad Tulshan, since deceased, Saroj Agarwalla vs. Malati Tulshan*] in support of the proposition that a person establishing *prima facie* interest in the estate of the testator should be permitted to contest the claim and the conclusive proof of such interest is not necessary.

Even if the testator had given some benefit to a third party who is otherwise not an heir according to intestate succession, does not confer any right upon such a third-party to lodge a caveat in the matter, unless he claims interest in the estate of the deceased otherwise than by way of the Will sought to be probated.

Learned counsel appearing for the opposite party nos. 1 and 2 controverts the petitioners' contentions and

submits that the petitioners, as rightly held by the probate court, claim an interest adverse to that of the testator and are not necessary parties to the probate proceeding, since they do not have any caveatable interest.

It is further contended that, in the present case, the petitioners have staked claim to a portion of the property, which is the subject-matter of the Will, by dint of a purported gift deed executed by the testator, which claim is not in support of the probate proceeding but is rather an independent claim of title.

Upon a perusal of the materials annexed to the revisional application, it is clear that the claim of the petitioners is based on their alleged title on the basis of a gift deed allegedly executed by the testator prior to his demise. Hence the following propositions can be inferred.

First, the petitioners merely claim independent title to the suit property, which cannot be decided by a probate court, since it is entirely within the domain of a regular civil court to decide such an issue.

Secondly, insofar as the execution of the Will and grant of a probate is concerned, the petitioners' claim is squarely adverse to that of the testator inasmuch as the petitioners' contention signifies that the testator did not have title in a portion of the suit property at the time of his demise, since a gift deed was executed in their favour.

It may also be noted that the petitioners claim a minuscule share in the suit property by virtue of the purported gift deed.

As such, in any event, the petitioners do not have even the slightest caveatable interest for the purpose of being impleaded in a probate proceeding.

It is well-settled that the limited scope of examination of a probate court is to enquire into the validity of the execution of the Will and whether the provisions of the Indian Succession Act were complied with in executing the Will and also during grant of a probate.

Such being the restricted conspectus of the probate court, the petitioners' claim of title regarding a portion of the property-in-dispute does not entitle the petitioners to be impleaded in the probate proceeding, either as necessary or proper parties.

Hence, the revisional application fails.

Accordingly, C.O. No.354 of 2021 is dismissed on contest, thereby affirming Order No.38 date January 18, 2021 passed by the Additional District and Sessions Judge, Second Court at Contai in Other Suit No. 08 of 2016.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)